

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

JIMMIE D. COTHERN,

Plaintiff,

v.

Civil Action No.: 2:22-cv-399

SWIFT TRANSPORTATION COMPANY
OF VIRGINIA, INC.

and

ALEXANDER ROMERO, JR.

Defendants.

NOTICE OF REMOVAL

Swift Transportation Company of Virginia, Inc. (“Swift of Virginia”), by counsel, pursuant to 28 U.S.C. sections 1441 and 1446, files this Notice of Removal to remove this action from the Circuit Court for the City of Chesapeake, Virginia. In support, Swift of Virginia states as follows:

1. The plaintiff filed suit against the defendants in the Circuit Court for the City of Chesapeake, Virginia on September 23, 2021. A copy of the Complaint, Summons and Answer of Swift of Virginia are attached hereto pursuant to 28 U.S.C. § 1446.

2. This Court has removal jurisdiction over this matter as there is diversity of citizenship between Plaintiff (a resident of Virginia) and Defendant Romero, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Defendant Romero is a resident of the state of South Carolina. As noted below, Swift of Virginia’s citizenship should be ignored.

3. Although Defendant Swift of Virginia was a Virginia corporation, its inclusion in this action constitutes fraudulent joinder because there is no possibility that Plaintiff will be able to establish a cause of action against it. *See Beaudoin v. Sites*, 886 F. Supp. 1300, 1303 (E.D. Va. 1995). Swift of Virginia's corporate status was surrendered in 2010, six years before the accident which is the subject of this lawsuit. At the time of the accident, Defendant Romero was employed by Swift Transportation Company of Arizona, LLC, a Delaware limited liability company with its principal place of business in Arizona. When a defendant has been fraudulently joined, complete diversity is not required to create federal jurisdiction premised upon 28 U.S.C. § 1332. *Terry Phillips Sales, Inc. v. SunTrust Bank*, 2014 U.S. Dist. LEXIS 22085, *12-*13 (E.D. Va. Feb 20, 2014) (*citing Mayes v. Rapoport*, 198 F.3d 457, 461 (4th Cir. 1999)).

4. Plaintiff served Swift of Virginia's registered agent on September 16, 2022. Defendant Romero has yet to be served. This Notice is filed within 30 days after Defendant Swift of Virginia was served.

5. Swift of Virginia has given notice of the filing of this Notice of Removal to counsel for the plaintiff, and has filed a copy with the Clerk of the Circuit Court for the City of Chesapeake, Virginia.

6. Venue is proper pursuant to 28 U.S.C. § 1391(a).

WHEREFORE, Defendant Swift Transportation Company of Virginia, Inc. requests that this Court remove this action from the Circuit Court for the City of Chesapeake, Virginia.

**SWIFT TRANSPORTATION
COMPANY OF VIRGINIA, INC.**

By Counsel

/s/

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C E R T I F I C A T E

I hereby certify that on the 23rd day of September, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following.

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